

## General Subrecipient Grant Conditions

### Office of Grants and Research Executive Office of Public Safety and Security

#### Introduction

- **Authorized Signatories for all subrecipients** should read pgs. 1-8 and should sign and date the bottom of p. 8.
- **Authorized Signatories for law enforcement subrecipients** must read and sign *Additional OGR Conditions for Law Enforcement Agencies* on p. 9.
- **Authorized Signatories for research subrecipients** must read and sign the *Human Subjects Protection* form attached as Addendum 1 on p. 10.
- **Authorized signatories for all subrecipients** should read and initial the bottom of pgs. 11-16.
- **Authorized Signatories for all subrecipients** should read Addendum 4 containing special conditions associated with the specific federal grant stream which is the source of the award. Initial the bottom of each page and sign and date at the end as indicated. If the source of the award is not federal or there are no special conditions, Addendum 4 will indicate N/A and should be signed and dated nonetheless.
- By signing a Standard Contract the Authorized Signatory is further agreeing to comply with all the conditions. Failure to comply with any of the conditions may result in termination of a contract or other sanctions.
- All pertinent read and signed or initialed pgs. should be returned with the signed Commonwealth of Massachusetts Standard Contract Form as indication that the Authorized Signatory has read these pgs. and is agreeing to comply with all pertinent federal, state, and Office of Grants and Research (OGR) conditions.

#### Federal Grant Funds Subrecipients

When receiving a grant award of federal funds administered by OGR, subrecipients must comply with **three sets of general grant conditions**: (1) federal conditions; (2) state conditions; and (3) OGR conditions. These three sets of general conditions are discussed in this primary document.

Federal conditions are based on laws passed by Congress, regulations issued by the federal department making the funds available and published in the Code of Federal Regulations (CFR), and financial guidance documents also created by the federal department making the funds available. Additionally in most cases, there are requirements and conditions associated with a *specific* federal grant stream which are not conditions of receipt of federal funds in general. See Addendum 4 for specific conditions associated with a specific federal grant stream.

State conditions are established in laws passed by the Massachusetts Legislature and in orders and rules established by the Governor, and are referenced in the contract subrecipients are required to execute. These conditions are found in the pages attached to the Standard Contract.

OGR conditions outline the further administrative requirements for each grant award established by the Executive Office of Public Safety and Security (EOPSS) and OGR. They are included in this document.

## State Grant Funds Subrecipients

When receiving a grant award from state funds administered by OGR, subrecipients must comply with **two** sets of grant conditions: (1) state conditions and (2) OGR conditions.

State conditions are established in laws passed by the Massachusetts Legislature and in orders and rules established by the Governor, and are referenced in the contract subrecipients and OGR are required to execute. These conditions are found in the pgs. attached to the Standard Contract.

OGR conditions outline the further administrative requirements for each grant award established by EOPSS and OGR. They are included in this document.

In addition to the general conditions set forth in this document, in most cases subrecipients will need to be aware of, and be able to meet, specific conditions attached to the specific contract the Authorized Signatory will be signing.

## Federal Conditions

### Basic Federal Grant Conditions

The basic federal grant conditions that follow apply to all federal grants, regardless of the federal department making the funds available.

- Audit Requirement of Federal Funds
  - OMB Circular A-133 requirements apply to each non-profit organization, each institution of higher education, and local governments as a whole when they or one of their departments receives federal funds. Any non-profit organization, institution of higher education, or local government spending more than \$500,000 in federal funds *from all sources* within a 12-month period must have an audit performed on the use of the funds. OGR defines the 12-month period as July 1 to June 30. The following webpage provides the full text of this basic federal grant requirement:  
[http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133\\_revised\\_2007.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf)
- Data Universal Number System (DUNS) and Central Contractor Registration (CCR)
  - All subrecipients of federal funds must have a nine-digit DUNS number in order. For more information: 1-866-705-5711 or <http://fedgov.dnb.com/webform>.
  - All subrecipients of federal funds must maintain annual registration in the CCR database: [www.ccr.gov](http://www.ccr.gov).
- Transparency Act Reporting for Federal Funds
  - The Federal Funding Accountability and Transparency Act (FFATA) requires EOPSS to report on a federal website specific award and subrecipient identifying information for each award greater than \$25,000 OGR makes with federal funds it received after October 1, 2010. Prior to receiving funds, each affected subrecipient must report certain information to OGR so that EOPSS can fulfill its FFATA reporting requirements. Data reported by EOPSS may be viewed at [www.USASpending.gov](http://www.USASpending.gov).

- Cost Principles for Federal Grants to *State and Local Governments*
  - 2 CFR Part 225 (formerly known as OMB Circular A-87) requirements apply only to state and local government subrecipients. These regulations list and define general categories of costs that are both allowable and unallowable. Examples are included below.
    - The cost of alcoholic beverages is unallowable.
    - Costs incurred by advisory councils are allowable.
    - Audit costs are allowable.
    - Compensation costs are allowable so long as they are consistent with that paid for similar work in other activities of the local government.
    - Entertainment costs are unallowable.
    - Equipment costs are allowable with the prior approval of OGR. Equipment having a useful life of more than one year or a current per-unit fair market value of \$5,000 or more must be tracked. When replacing equipment purchased with federal funds, the equipment to be replaced may be used as a trade-in or can be sold with the proceeds used to offset the cost of the replacement equipment. In addition, during the period of the contract with OGR, insurance on the equipment is allowable. Information required to be captured and recorded appears in **Addendum 3**.
    - Travel costs are allowable if pre-approved by OGR and if they are consistent with costs normally allowed in like circumstances for non-federally funded activities. The following webpage provides the full text of this basic federal grant requirement:  
[http://www.whitehouse.gov/omb/fedreg/2005/083105\\_a87.pdf](http://www.whitehouse.gov/omb/fedreg/2005/083105_a87.pdf).
    - If a subrecipient uses grant funds to pay its employees, the subrecipient must maintain timesheets for work performed with the grant funds. Timesheets must show the hours worked and must be signed by the employee paid with the grant funds.
- Cost Principles for Federal Grants to *Non-Profit Organizations and Institutions of Higher Education* requirements apply only to the non-profit and higher education subrecipients. The CFRs referenced below list and define general categories of costs that are allowable and unallowable. The links below provide the full text of these two basic federal grant requirements.
  - 2 CFR Part 220 pertains to Educational Institutions (formerly known as OMB Circular A-21): [http://www.whitehouse.gov/omb/fedreg/2005/083105\\_a21.pdf](http://www.whitehouse.gov/omb/fedreg/2005/083105_a21.pdf).
  - 2 CFR Part 230 pertains to Non-profit Organizations (formerly known as OMB Circular A-122):  
[http://www.whitehouse.gov/omb/fedreg/2005/083105\\_a122.pdf](http://www.whitehouse.gov/omb/fedreg/2005/083105_a122.pdf).
- Nondiscrimination Requirements
  - If you receive federal funds, you must comply with, and you must require your subcontractors, if any, to comply with, all applicable statutorily-imposed nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. § 10604(e)); the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131-34); the Education Amendments of 1972 (20 U.S.C. §§ 1681, 1683, 1685-86); the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); Ex. Order 13279 (equal protection of the laws for faith-based and community organizations); and 28

C.F.R. pt. 38 (U.S. Department of Justice Equal Treatment for Faith-Based Organizations).

- Per Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968, you must take reasonable steps to provide meaningful access for persons with limited English proficiency.
  - In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, you must forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs and to EOPSS/OGR.
  - In accordance with federal civil rights laws, you shall not retaliate against individuals for taking action or participating in action to secure rights protected by these laws.
- Human Subjects Protection (for research subrecipients only, see Addendum 1).

### **Additional Federal Department-Dependent Grant Conditions**

In addition to the basic federal grant conditions, each federal department that is the source of the funds may impose additional conditions. If you are awarded funds by OGR that originate from any of the federal departments listed below, you should be familiar with the text from each of the applicable links.

#### **U.S. Department of Justice Funds**

The U.S. Department of Justice offers a Financial Guide that presents grant requirements as defined by this federal agency. All subrecipients of these funds must adhere to these requirements.

- The webpage for the US DOJ Financial Guide is as follows:  
<http://www.ojp.usdoj.gov/financialguide/index.htm>.

Pay particular attention to the sections on (1) matching or cost sharing, (2) allowable costs, (3) unallowable costs, (4) procurement under awards of federal assistance, (5) costs requiring prior approval, (6) equipment, and (7) retention and access requirements for records.

- If you receive DOJ grant funds, you may be required to comply with the regulatory requirement to develop, maintain on file, and submit for review to the Office for Civil Rights, Office of Justice Programs and to OGR an Equal Employment Opportunity Plan (EEOP). The url for DOJ's system for implementing this requirement is as follows:  
[http://www.ojp.usdoj.gov/about/ocr/eeop\\_comply.htm](http://www.ojp.usdoj.gov/about/ocr/eeop_comply.htm)

#### **U.S. Department of Transportation Funds**

The National Highway Traffic Safety Administration (NHTSA) of the U.S. Department of Transportation offers two documents that present requirements for the use of the funds and outline the purpose of each category of grants provided.

- The urls for the two programmatic and financial guide documents made available from NHTSA are as below.

- Highway Safety Grant Funding Policy:  
[http://www.nhtsa.gov/nhtsa/whatsup/TEA21/GrantMan/HTML/GrantFundPolicy\\_mkm\\_revJuly07.pdf](http://www.nhtsa.gov/nhtsa/whatsup/TEA21/GrantMan/HTML/GrantFundPolicy_mkm_revJuly07.pdf)

Pay particular attention to the sections on (1) allowable costs for equipment, travel, training, and consultant services; and (2) unallowable costs for equipment, facilities and construction, training and program administration.

A more complete document on administrative requirements is found in 49 CFR Part 18 - the Uniform Administrative Requirement for Grants as promulgated by the U.S. Department of Transportation.

- Highway Safety Grant Management Manual:  
[http://www.nhtsa.gov/nhtsa/whatsup/TEA21/GrantMan/HTML/00\\_Manl\\_Content1\\_01.html](http://www.nhtsa.gov/nhtsa/whatsup/TEA21/GrantMan/HTML/00_Manl_Content1_01.html). This document provides information on each of the grant programs including Sections 154, 164, 402, 405, 408, 410, 1906, 2010, and 2011 grant programs.

### **U.S. Department of Homeland Security Funds**

The U.S. Department of Homeland Security Code of Federal Regulations 44 CFR Part 13 Subpart C presents grant requirements as defined by this federal agency. If you receive these funds, you must adhere to these requirements.

The link to the Code of Federal Regulations is:  
<http://www.gpoaccess.gov/cfr/retrieve.html>

Once at this site, enter 44 as the CFR, Part 13 and Subpart C to view the regulations.

Because of the importance of equipment purchases for the program, the following webpage provides more specific information and guidance on the management of equipment purchased from this source of funds:  
[http://edocket.access.gpo.gov/cfr\\_2007/octqtr/pdf/44cfr13.32.pdf](http://edocket.access.gpo.gov/cfr_2007/octqtr/pdf/44cfr13.32.pdf).

### **State Conditions**

For cities, towns, other public entities, non-profit organizations receiving state grant funds, the primary state conditions are included in the Contractor Certifications and Legal References document attached as **Addendum 2** (which is excerpted from the Instructions for the Commonwealth Standard Contract form). Please pay attention to the specific certifications, legal references, and links in Addendum 2. The Authorized Signatory's signature on the Standard Contract indicates that all materials have been read and the Signatory is agreeing to comply with all certifications and obligations.

### **OGR Conditions**

In addition to the federal and state general grant conditions outlined above, the Office of Grants and Research (OGR) in the Executive Office of Public Safety and Security (EOPSS) has certain grant conditions that are essential to the administration of grant awards. Whether subrecipients are receiving funds from a federal or state grant, they must adhere to these conditions.

- **Federal and State Conditions** must be adhered to by subrecipients of federal grant funds.

- **Time extensions** of contracts, while uncommon, may be granted at the option of OGR. They are not encouraged or guaranteed.
  - If a subrecipient needs additional time to complete the scope of work for the grant award, OGR may grant a time-only extension as long as the revised contract containing the extension request is executed by both the subrecipient and OGR before the current end date of the contract. No time extension can be granted if the revised contract form is executed after the current end date of the contract.
  - Requests for time extensions must to be made at least 30 days before the end date of the contract.
- **Award amounts remaining at the end of the contract** will be reverted back to OGR. All goods must be received and all services rendered by the end date of the contract.
- **Requests for reimbursement** must be received by OGR within 30 days of the end date of the contract. Those received after 30 days may result in non-payment at the option of OGR. Reimbursement under a subsequent contract may also be withheld pending resolution of any pending documentation or other requirements not fulfilled to the satisfaction of OGR. Furthermore, OGR may withhold execution of any subsequent contract.
  - If the request for reimbursement is returned because of incomplete documentation, the request and documentation must be resubmitted within the timeframe dictated by OGR.
- **Programmatic and financial reports** must be received in accordance with the requirements of the specific award. At the option of OGR, reimbursement will be held until all reporting requirements are met.
- **Allowable grant-related travel costs** charged to grant awards will currently be paid at the lesser of \$.40 per mile or the subrecipient's normal reimbursement rate. This rate is subject to change. Tolls and parking for grant-related local travel may also be paid. Receipts are required.
- **Indirect cost rates** will not be reimbursed based on a percentage rate without documentation of the rate having been approved by a federal agency. When a percentage rate has not been approved by a federal agency, a subrecipient may request of OGR allowable direct costs that will be incurred and can be specifically allocated to the project being funded.
- **Procurement practices** of subrecipient agencies must be followed. The subrecipient should ensure that its procurement practices conform to any specific federal guidelines found in the references in the federal conditions section above. Where there is a difference between the practices of the subrecipient agency/organization and a federal guideline, the more restrictive procedure applies.
- **Timesheets** must be maintained by subrecipients for work performed by its employee(s) paid for with grant funds. Timesheets must show the hours worked and paid for with grant funds and must be signed by the employee(s).
- **Submission of "Federal OMB Circular A-133 Audit Form"** is required for subrecipients that receive more than \$500,000 in federal funds from all sources. OGR has developed a "self-identifying" form titled "Federal OMB Circular A-133 Audit Form" to be submitted to OGR at the end of the fiscal year and after the completion of an A-133 federal funds audit. The form asks if the subrecipient was required to have an audit and, if so, to identify any findings related to the federal funds awarded by OGR.
- **Site visits** to subrecipients will be made by OGR periodically. All records, papers, and other documents of any kind related to the funded activity must be made

promptly available upon request for inspection and copying to any person authorized by OGR.

- **Grant-related documents** must be retained for a period of six years from the close of the contract.
- **Evaluations** of a subrecipient's funded program by an outside evaluator during or at the conclusion of the project period, should be reported to OGR in writing and a copy of the evaluation should be provided.
- **Reporting alleged fraud, waste or abuse** to the Office of the State Auditor or Inspector General and/or to an applicable federal agency is the responsibility of the subrecipient. This includes any alleged violations, serious irregularities, sensitive issues or overt or covert acts involving the use of public funds in a manner not consistent with federal statutes, related laws and regulations, appropriate guidelines, or purposes of the grant.
- **Use of funds should begin** within 60 days of the start of the contract, and if they are not, the subrecipient must report to OGR the steps taken to initiate the grant activities, the reasons for the delay, and the expected start of the use of the funds. If meaningful implementation steps have not begun after 60 days of the grant start date, OGR reserves the right to cancel the contract.
- **Subcontractors** implementing activities with grant funds must adhere to the grant provisions in this document and should be approved by OGR prior to subrecipients executing subcontracts.
- **Instructional materials** created or produced with grant funds will be "work made for hire," as defined in United States copyright law, and EOPSS shall be considered the author. EOPSS shall be the sole owner of all rights pertaining to these materials, including copyrights and all rights to use, reproduce, or publish the materials, and subrecipients may not use, reproduce, or distribute such materials without prior written approval of OGR. If a project results in the production of **other original books, manuals, or copyrightable material**, unless otherwise provided in the contract documents, EOPSS reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, translate or otherwise use, and authorize others to publish and use, such material. If paid with federal funds, the grant number must appear on the materials.
- **Audio visual or written materials** developed as part of the grant may be required to incorporate specific language or disclaimers (e.g., regarding the federal source of funding) and in some instances pre-approval from the federal funding agency as instructed by the OGR grants manager.

\_\_\_\_\_  
Signature of Authorized Signatory

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

## Additional OGR Conditions for Law Enforcement Agencies

Law enforcement agencies are subject to mandatory reporting requirements of various information, including, but not limited to the reporting requirements listed below. EOPSS and OGR may withhold reimbursements, cancel your contract, or withhold execution of any future grants for law enforcement agencies that do not comply with reporting requirements.

- **Crime Data Reporting.** Law enforcement organizations must submit timely and satisfactory monthly Uniform Crime Reporting (UCR) or National Incident Based Reporting System (NIBRS) reports to the Commonwealth's Crime Reporting Unit at the Commonwealth Fusion Center. If your organization has hardware and software that support the creation of NIBRS data, crime data must be submitted to the Crime Reporting Unit in that format.
- **Motor Vehicle Accident Reporting.** Police departments are required to report to the Registry of Motor Vehicles, within 15 days, accidents in which death, injury, or property damage in excess of \$1,000 occurs (M.G.L. c. 90, § 29). The crash reports can be delivered to the Registry of Motor Vehicles (RMV) main office through post office mail or through electronic submission. You may contact the RMV headquarters for any additional information.
- **Juvenile Lockup Data.** Law enforcement agencies that maintain a juvenile lockup must submit monthly juvenile lockup data to the Department of Criminal Justice Information Services via CJIS/LEAPS. Contact OGR's Juvenile Justice Program Coordinator for additional information.
- **Fingerprint Cards.** Law enforcement agencies must regularly submit fingerprint cards for all felony arrests to the Identification Section at the Massachusetts State Police Crime Lab as required by state law (M.G.L. c. 263, § 1A; G.L. c. 94C, § 45).

\_\_\_\_\_  
Signature of Authorized Signatory for Law Enforcement Agency

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title



## Addendum 1

### For Research Grants Only: Human Subjects Protection

Research subrecipients must check one of the statements below.

- ☐ **a. The research activities covered under this Contract/ISA do not involve human subjects.**
- ☐ **b. The research activities covered under this Contract/ISA do involve human subjects.**

If the research activities involve human subjects (option b), then the subrecipient agrees to certify compliance with 28 C.F.R. Part 46 regulations by completing, "Protection of Human Subjects, IRB Certification, Declaration of Exemption (Common Rule)." This form is available at the National Institute of Justice webpage at <http://www.ojp.usdoj.gov/nij/funding/humansubjects/human-subjects.htm>

The regulation for The Protection of Human Subjects 28 C.F.R Part 46 section 46.101(b)(1-6) defines categories of research involving human subjects that are exempt from its provisions. Details on exemptions can be found at the same National Institute of Justice webpage listed above.

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Sign and submit this form, with an original signature, to the Executive Office of Public Safety and Security's Office of Grants and Research and retain a copy for your records.

\_\_\_\_\_  
Signature of Authorized Signatory for Research Subrecipient

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

## Addendum 2 (Excerpted directly from pgs. 3-5 of the Commonwealth's Standard Contract)

### CONTRACTOR CERTIFICATIONS AND LEGAL REFERENCES

Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified, subject to any required approvals. The Contractor makes all certifications required under this Contract under the pains and penalties of perjury, and agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein:

**Commonwealth and Contractor Ownership Rights.** The Contractor certifies and agrees that the Commonwealth is entitled to ownership and possession of all "deliverables" purchased or developed with Contract funds. A Department may not relinquish Commonwealth rights to deliverables nor may Contractors sell products developed with Commonwealth resources without just compensation. The Contract should detail all Commonwealth deliverables and ownership rights and any Contractor proprietary rights.

**Qualifications.** The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability; and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.

**Business Ethics and Fraud, Waste and Abuse Prevention.** The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

**Collusion.** The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud or unfair trade practices with any other person, that any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

**Public Records and Access** The Contractor shall provide full access to records related to performance and compliance to the Department and officials listed under Executive Order 195 and G.L. c. 11, s. 12 seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor can not claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under 950 C.M.R. 32.00.

**Debarment.** The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation including, Executive Order 147; G.L. c. 29, s. 29F G.L. c.30, § 39R, G.L. c.149, § 27C, G.L. c.149, § 44C, G.L. c.149, § 148B and G.L. c. 152, s. 25C.

**Applicable Laws.** The Contractor shall comply with all applicable state laws and regulations including but not limited to the applicable Massachusetts General Laws; the Official Code of Massachusetts Regulations; Code of Massachusetts Regulations (unofficial); 801 CMR 21.00 (Procurement of Commodity and Service Procurements, Including Human and Social Services); 815 CMR 2.00 (Grants and Subsidies); 808 CMR 1.00 (Compliance, Reporting and Auditing for Human And Social Services); AICPA Standards; confidentiality of Department records under G.L. c. 66A; and the Massachusetts Constitution Article XVII if applicable.

**Invoices.** The Contractor must submit invoices in accordance with the terms of the Contract and the Commonwealth Bill Paying Policy. Contractors must be able to reconcile and properly attribute concurrent payments from multiple Departments. Final invoices in any fiscal year must be submitted no later than August 15<sup>th</sup> for performance made and received (goods delivered, services completed) prior to June 30<sup>th</sup>, in order to make payment for that performance prior to the close of the fiscal year to prevent reversion of appropriated funds. Failure to submit timely invoices by August 15<sup>th</sup> or other date listed in the Contract shall authorize the Department to issue an estimated payment based upon the Department's determination of performance delivered and accepted. The Contractor's acceptance of this estimated payment releases the Commonwealth from further claims for these invoices. If budgetary funds revert due to the Contractor's failure to submit timely final invoices, or for disputing an estimated payment, the Department may deduct a penalty up to 10% from any final payment in the next fiscal year for failure to submit timely invoices.

**Payments Subject To Appropriation.** Pursuant to G.L. c. 29 § 26, § 27 and § 29, Departments are required to expend funds only for the purposes set forth by the Legislature and within the funding limits established through appropriation, allotment and subsidiary, including mandated allotment reductions triggered by G.L. c. 29, § 9C. A Department cannot authorize or accept performance in excess of an existing appropriation and allotment, or sufficient non-appropriated available funds. Any oral or written representations, commitments, or assurances made by the Department or any other Commonwealth representative are not binding. The Commonwealth has no legal obligation to compensate a Contractor for performance that is not requested and is intentionally delivered by a Contractor outside the scope of a Contract. Contractors should verify funding prior to beginning performance.

**Intercept.** Contractors may be registered as Customers in the Vendor file if the Contractor owes a Commonwealth debt. Unresolved and undisputed debts, and overpayments of Contract payments that are not reimbursed timely shall be subject to intercept pursuant to G.L. c. 7A, s. 3 and 815 CMR 9.00. Contract overpayments will be subject to immediate intercept or payment offset. The Contractor may not penalize any state Department or assess late fees, cancel a Contract or other services if amounts are intercepted or offset due to recoupment of an overpayment, outstanding taxes, child support, other overdue debts or Contract overpayments.

**Tax Law Compliance.** The Contractor certifies under the pains and penalties of perjury tax compliance with Federal tax laws; State tax laws including but not limited to G.L. c. 62C, G.L. c. 62C, s. 49A; compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under G.L. c. 62E, withholding and remitting child support including G.L. c. 119A, s. 12; TIR 05-11; New Independent Contractor Provisions and applicable TIRs.

**Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts.** The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing at **least 45 days** prior to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is **any risk** to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

Initials: \_\_\_\_\_

**Federal Anti-Lobbying and Other Federal Requirements.** If receiving federal funds, the Contractor certifies compliance with federal anti-lobbying requirements including 31 USC 1352; other federal requirements: Executive Order 11246; Air Pollution Act; Federal Water Pollution Control Act and Federal Employment Laws.

**Protection of Personal Data and Information.** The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under G.L. c. 93H and c. 66A and Executive Order 504. The Contractor is required to comply with G.L. c. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information, provided further that the Contractor is required to ensure that any personal data or information transmitted electronically or through a portable device be properly encrypted using (at a minimum) Information Technology Division (ITD) Protection of Sensitive Information, provided further that any Contractor having access to credit card or banking information of Commonwealth customers certifies that the Contractor is PCI compliant in accordance with the Payment Card Industry Council Standards and shall provide confirmation compliance during the Contract, provide further that the Contractor shall immediately notify the Department in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the Commonwealth and provide access to any information necessary for the Commonwealth to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to G.L. c. 214, s. 3B.

**Corporate and Business Filings and Reports.** The Contractor certifies compliance with any certification, filing, reporting and service of process requirements of the Secretary of the Commonwealth, the Office of the Attorney General or other Departments as related to its conduct of business in the Commonwealth; and with its incorporating state (or foreign entity).

**Employer Requirements.** Contractors that are employers certify compliance with applicable state and federal employment laws or regulations, including but not limited to G.L. c. 5, s. 1 (Prevailing Wages for Printing and Distribution of Public Documents); G.L. c. 7, s. 22 (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); minimum wages and prevailing wage programs and payments; unemployment insurance and contributions; workers' compensation and insurance, child labor laws, AGO fair labor practices; G.L. c. 149 (Labor and Industries); G.L. c. 150A (Labor Relations); G.L. c. 151 and 455 CMR 2.00 (Minimum Fair Wages); G.L. c. 151A (Employment and Training); G.L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); G.L. c. 152 (Workers' Compensation); G.L. c. 153 (Liability for Injuries); 29 USC c. 8 (Federal Fair Labor Standards); 29 USC c. 28 and the Federal Family and Medical Leave Act.

**Federal And State Laws And Regulations Prohibiting Discrimination** including but not limited to the Federal Equal Employment Opportunity (EEO) Laws the Americans with Disabilities Act; 42 U.S.C. Sec. 12101, et seq., the Rehabilitation Act, 29 USC c. 16 s. 794; 29 USC c. 16 s. 701; 29 USC c. 14, 623; the 42 USC c. 45; (Federal Fair Housing Act); G.L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); the Public Accommodations Law G.L. c. 272, s. 92A; G.L. c. 272, s. 98 and 98A, Massachusetts Constitution Article CXIV and G.L. c. 93, s. 103; 47 USC c. 5, sc. II, Part II, s. 255 (Telecommunication Act; Chapter 149, Section 105D, G.L. c. 151C, G.L. c. 272, Section 92A, Section 98 and Section 98A, and G.L. c. 111, Section 199A, and Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities, and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also MCAD and MCAD links and Resources.

**Small Business Purchasing Program (SBPP).** A Contractor may be eligible to participate in the SBPP, created pursuant to Executive Order 523, if qualified through the SBPP SmartBid subscription process at: www.comm-pass.com and with acceptance of the terms of the SBPP participation agreement.

**Limitation of Liability for Information Technology Contracts (and other Contracts as Authorized).** The Information Technology Mandatory Specifications and the IT Acquisition Accessibility Contract Language are incorporated by reference into Information Technology Contracts. The following language will apply to Information Technology contracts in the U01, U02, U03, U04, U05, U06, U07, U08, U09, U10, U75, U98 object codes in the Expenditure Classification Handbook or other Contracts as approved by CTR or OSD. Pursuant to Section 11. Indemnification of the Commonwealth Terms and Conditions, the term "other damages" shall include, but shall not be limited to, the reasonable costs the Commonwealth incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. "Other damages" shall not include damages to the Commonwealth as a result of third party claims, provided, however, that the foregoing in no way limits the Commonwealth's right of recovery for personal injury or property damages or patent and copyright infringement under Section 11 nor the Commonwealth's ability to join the contractor as a third party defendant. Further, the term "other damages" shall not include, and in no event shall the contractor be liable for, damages for the Commonwealth's use of contractor provided products or services, loss of Commonwealth records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the Commonwealth. In no event shall "other damages" exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. Section 11 sets forth the contractor's entire liability under a Contract. Nothing in this section shall limit the Commonwealth's ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference Section 11 of the Commonwealth Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement. These terms may be applied to other Contracts only with prior written confirmation from the Operational Services Division or the Office of the Comptroller. The terms in this Clarification may not be modified.

**Northern Ireland Certification.** Pursuant to G.L. c. 7 s. 22C for state agencies, state authorities, the House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

**Pandemic, Disaster or Emergency Performance.** In the event of a serious emergency, pandemic or disaster outside the control of the Department, the Department may negotiate emergency performance from the Contractor to address the immediate needs of the Commonwealth even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

**Consultant Contractor Certifications** (For Consultant Contracts "HH" and "NN" and "U05" object codes subject to G.L. Chapter 29, s. 29A). Contractors must make required disclosures as part of the RFR Response or using the Consultant Contractor Mandatory Submission Form.

**Attorneys.** Attorneys or firms providing legal services or representing Commonwealth Departments may be subject to G.L. c. 30, s. 65, and if providing litigation services must be approved by the Office of the Attorney General to appear on behalf of a Department, and shall have a continuing obligation to notify the Commonwealth of any conflicts of interest arising under the Contract.

Initials: \_\_\_\_\_

**Subcontractor Performance.** The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontracts, and that the Department will not be required to directly or indirectly manage subcontractors or have any payment obligations to subcontractors.

#### EXECUTIVE ORDERS

For covered Executive state Departments, the Contractor certifies compliance with applicable Executive Orders (see also Massachusetts Executive Orders), including but not limited to the specific orders listed below. A breach during period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.

**Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts.** For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker

**Executive Order 130. Anti-Boycott.** The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See IRC § 999(b)(3)-(4), and IRS Audit Guidelines Boycotts) or engages in conduct declared to be unlawful by G.L. c. 151E, s. 2. A breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, the Commonwealth shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

**Executive Order 346. Hiring of State Employees By State Contractors** Contractor certifies compliance with both the conflict of interest law G.L. c. 268A specifically s. 5 (f) and this order; and includes limitations regarding the hiring of state employees by private companies contracting with the Commonwealth. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

**Executive Order 444. Disclosure of Family Relationships With Other State Employees.** Each person applying for employment (including Contract work) within the Executive Branch under the Governor must disclose in writing the names of all immediate family related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

**Executive Order 504. Regarding the Security and Confidentiality of Personal Information.** For all Contracts involving the Contractor's access to personal information, as defined in G.L. c. 93H, and personal data, as defined in G.L. c. 66A, owned or controlled by Executive Department agencies, or access to agency systems containing such information or data (herein collectively "personal information"), Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read Commonwealth of Massachusetts Executive Order 504 and agrees to protect any and all personal information; and (2) has reviewed all of the Commonwealth **Information Technology Division's Security Policies**. Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all state agencies in the Executive Department, including all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with the contracting agency's Information Security Program (ISP) and any pertinent security guidelines, standards, and policies; (2) comply with all of the Commonwealth of Massachusetts Information Technology Division's "Security Policies" (3) communicate and enforce the contracting agency's ISP and such Security Policies against all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information to which the Contractor is given access by the contracting agency from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information (collectively referred to as the "unauthorized use"): (a) immediately notify the contracting agency if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the contracting agency to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the contracting agency and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 11 of the Commonwealth's **Terms and Conditions**, withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under G.L. c. 214, § 3B for violations under M.G.L. c. 66A.

**Executive Orders 523, 524 and 526.** Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes Executive Order 478). **Executive Order 524** (Establishing the Massachusetts Supplier Diversity Program which supersedes Executive Order 390). **Executive Order 523** (Establishing the Massachusetts Small Business Purchasing Program.) All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices; and the Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and the Contractor commits to purchase supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. These provisions shall be enforced through the contracting agency, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

**Initials:** \_\_\_\_\_

## Addendum 3

### Federal Guidelines on Equipment

The following are the guidelines on equipment found in the Federal Uniform Administrative Requirements for Grants document. As the name implies, these guidelines apply to all federal grant programs. While previously referred to as Federal OMB Circular A-102, it is now codified by each of the OGR federal granting agencies within various sections of the Code of Federal Regulations. The sections on equipment are as follows:

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantee and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.*

(1) Equipment shall be used by the grantee or subgrantees in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in §18.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

**Initials:** \_\_\_\_\_

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantee or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the subrecipient or sub-subrecipient will request disposition instructions from the Federal agency.

**Initials:** \_\_\_\_\_

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow §18.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

**Equipment in accordance with NHTSA requirements:**

Equipment acquired under this agreement for use in highway safety program areas shall be used and kept in operation for highway safety purposes by the State, or the State, by formal agreement with appropriate officials of a political subdivision or State agency, shall cause such equipment to be used and kept in operation for highway safety purposes 23 CFR 1200.21

**Initials:** \_\_\_\_\_

## Addendum 4

**X** Federal or other grant-specific special conditions inserted below.

☐ N/A.

For grants originating from the National Highway Traffic Safety Administration funds, the language below supersedes any other pertinent language contained in the OGR Subrecipient Grant Conditions document.

- **Civil Rights**

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 888-352) which prohibits discrimination on the basis of race, color of national origin (and 49 CFR Part 21); (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) and the American with Disabilities Act of 1990 (42 U.S.C. § 12101, *et seq.*; PL 101-336), which prohibits discrimination on the basis of Disabilities (and 49 CFR Part 27); (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to the nondiscrimination on the basis of drug abuse; (f) the comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended relating to nondiscrimination on the basis of alcohol abuse of alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental, or financing of housing; (i) any other nondiscrimination provisions in the special statute(s) under which application for Federal assistance is being made; The Civil Rights Restoration Act of 1987, which provides that any portion of a state or local entity receiving federal funds will obligate all programs or activities of that entity to comply with these civil rights laws; and (k) the requirements of any other nondiscrimination statute(s) which may apply to the application.

- **Buy America Act**

The State will comply with the provisions of the Buy America Act (49 U.S.C. 5323 (j)) which contains the following requirements:

Only steel, iron and manufactured products produced in the United State may be purchased with Federal funds unless the Secretary of Transportation determines that such domestic purchases would be inconsistent with the public interest; that such materials are not reasonably available and of a satisfactory quality; or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. Clear justification for the purpose of non-domestic items must be in the form of a waiver request submitted to and approved by the Secretary of Transportation.

- **Political Activity (Hatch Act)**

The State will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.



## **CERTIFICATION REGARDING FEDERAL LOBBYING**

### **Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **RESTRICTION ON STATE LOBBYING**

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

- **CERTIFICATION REGARDING DEBARMENT AND SUSPENSION**

Instructions for Lower Tier Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meanings set out in the Definition and Coverage sections of 49 CFR Part 29. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. (See below)
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion  
-- Lower Tier Covered Transactions:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

• **OTHER FEDERAL REQUIREMENTS**

*Cash management*

Cash drawdowns will be initiated only when actually needed for disbursement (i.e., as close as possible to the time of making disbursements). Cash disbursements and balances will be reported in a timely manner as required by NHTSA. 49 CFR 18.20

For subgrantees, grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees. 49 CFR 18.20

Failure to adhere to these provisions may result in the termination of drawdown privileges.

\_\_\_\_\_  
Signature of Authorized Signatory

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title